

THE JENCKS LAW GROUP
ATTORNEYS & COUNSELORS AT LAW

June 9, 2015

BY ELECTRONIC MAIL AND HAND DELIVERY

<wmcdonald@co.slo.ca.us>

Whitney G. McDonald
Office of the County Counsel
County Government Center, Room D320
1055 Monterey Street
San Luis Obispo, CA 93408

Subject: County File No DRC2014-00016
California Flats Solar Plant
BOS Public Hearing 06.16.15

Dear Ms. McDonald:

I understand from Mr. Naficy that you will be representing the County and Board on this matter. I am in receipt of the Notice of Public Hearing and understand that a purpose of the hearing is for the Board to consider whether the FEIR certified by the Lead Agency is adequate for San Luis Obispo County's compliance as a Responsible Agency. I represent the San Luis Obispo County-based environmental organization Biodiversity First!

I want to draw to your attention the circumstance of multiple tolling agreements approved by the Lead Agency and applicant that may suggest the Board's consideration of this matter on June 16 may, at least as a practical matter, be premature.

My client and its members participated in the administrative process, including appearing and making comments at the February 10, 2015 hearing at which the Monterey BOS approved the FEIR. My client timely filed a Notice of Intent to Challenge Approval of the California Flats Solar Project (PLN 120294) and its Final Environmental Impact Report (SCH 2013041031) pursuant to PRC §21167.5. A copy of the Notice of Intent is appended to the original of this letter. Since then the Statute of Limitation (PRC §21167(c)) has been tolled by six consecutive amendments to the tolling agreements of the Lead Agency County of Monterey, the project applicant and real party in interest California Flats Solar LLC, and Biodiversity First!. The Statute is currently tolled through and including July 2, 2015, by operation of "Amendment No. 6 to Tolling Agreement Regarding CEQA Claims

Ms. Whitney G. McDonald
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Against the California Flats Solar, LLC. Project", a copy of which is appended to the original of this letter. July 3 is the earliest date on which my client may file its CEQA-based claims.

This project has drawn vigorous participation, comment, and environmental controversy. I am informed and believe a number of local, state, and national NGOs share my client's circumstance of having entered into tolling agreements tolling their time to initiate lawsuits prosecuting their CEQA-based claims arising from the California Flats Project. I believe these organizations may include one or more of Audubon California, California Native Plant Society, Defenders of Wildlife, Center for Biological Diversity, Sierra Club, Tribal Organizations, Monterey County Citizens For Responsible Development, among others. One or two settlements have apparently been reached but most CEQA-claims remain unresolved and the subject of pending and continuing negotiations. I believe the tolling agreements all extend the Statute of Limitation for the groups' CEQA claims through July 2, 2015. Many claims potentially affect application of and compliance with the FEIR in SLO County, a couple in major ways, and it is my professional opinion that at least some of such issues, including some of the thorniest, are likely to be resolved or at least clarified in the current negotiations and in one or more settlements likely to be reached during the remaining tolling period.

An ancillary benefit of a short continuance may be that certain threshold process requirements under CEQA, for example involving NOP defects and/or omissions, may be susceptible of remediation by the Lead Agency, removing them from controversy or dispute altogether.

We welcome and applaud the decision to include in the scope of the hearing the broader Responsible Agency concerns of the adequacy of the FEIR for the SLO-based parts of the project and on which SLO permitting will need to be based. I believe a short postponement of the hearing date will result in significant conservation of time and a narrowed and refined focus of the hearing.

My client requests, and I recommend, that the June 16, 2015, hearing be continued to a date after July 2, 2015.

Thank you.

Very truly yours,



MICHAEL R. JENCKS

March 23, 2015

Charles Joseph McKee SBN 152458
County Counsel
Office of the County Counsel
County of Monterey

Notice of Intent to Challenge Approval of the California Flats Solar Project
(PLN 120294) and its Final Environmental Impact Report (SCH
2013041031) (Public Resources Code §21167.5)

Dear Mr. McKee:

Carrizo Plain-based Biodiversity First! and its members intend to file suit, including for claims under the California Environmental Quality Act, seeking to overturn and set aside the February 10, 2015 Board of Supervisors' approvals of a use permit; adoptions of Findings of Fact and Statement of Overriding Considerations; Certification of a Final Environmental Impact Report; and adoptions of a Mitigation Monitoring and Reporting Plan and development agreement ordinance.

The County filed a Notice of Determination with the County Clerk on February 11, 2015 and with the State Clearing House, the latter received by the State on February 17, 2015. An agreement has tolled the statute of limitations until March 27, 2015.

Please contact me if you have any questions.

Very truly yours,

BIODIVERSITY FIRST!

By _____
Greg McMillan, Vice Chair

"Biodiversity First! is the first precaution of intelligent land use!" - Aldo Leopold 1949

POB 69 Box 3118 Carrizo Plain California 93453

COPY

**AMENDMENT NO. 6 TO TOLLING AGREEMENT REGARDING
CEQA CLAIMS AGAINST THE CALIFORNIA FLATS SOLAR, LLC PROJECT**

This Amendment No. 6 to the March 12, 2015 Tolling Agreement ("Amendment No. 6") is entered into as of June 2, 2015 (the "Effective Date") by and between:

Biodiversity First!, an unincorporated association;

The County of Monterey, a general law county within the State of California ("Monterey County"); and

California Flats Solar LLC ("Cal Flats LLC"), a Delaware limited liability company,

by and through their respective authorized representatives, signing below. Biodiversity First!, Monterey County and Cal Flats LLC are each referred to herein as a "Party" and are collectively referred to herein as the "Parties."

RECITALS

- A. The Parties previously have entered into that certain Tolling Agreement Regarding CEQA Claims Against the California Flats Solar Project, dated March 12, 2015 ("Original Agreement"), that certain Amendment No. 1 to Tolling Agreement Regarding CEQA Claims Against the California Flats Solar Project, dated March 26, 2015 ("Amendment No. 1"), that certain Amendment No. 2 to Tolling Agreement Regarding CEQA Claims Against the California Flats Solar Project, dated April 9, 2015 ("Amendment No. 2"), that certain Amendment No. 3 to Tolling Agreement Regarding CEQA Claims Against the California Flats Solar Project, dated April 16, 2015 ("Amendment No. 3"), that certain Amendment No. 4 to Tolling Agreement Regarding CEQA Claims Against the California Flats Solar Project, dated May 7, 2015 ("Amendment No. 4") and that certain Amendment No. 5 to Tolling Agreement Regarding CEQA Claims Against the California Flats Solar Project, dated May 21, 2015 ("Amendment No. 5"). The Original Agreement as previously amended by Amendment Nos. 1, 2, 3, 4 and 5 is hereinafter collectively referred to as the "Existing Agreement."
- B. The Parties now desire to amend the Existing Agreement in accordance with the terms and conditions of this Amendment No. 6. The Existing Agreement as amended by this Amendment No. 6 is hereinafter collectively referred to as the "Agreement."

TERMS

Now, therefore, in consideration of the terms and conditions of this Agreement, the Parties hereby agree to the following:

1. Capitalized terms used but not otherwise defined herein shall have the meanings given such terms in the Existing Agreement.

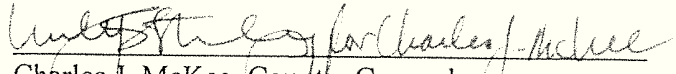
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2. The Expiration Date of June 4, 2015, set forth in Section 2 of Amendment No. 5, is hereby extended to July 2, 2015 (the "Expiration Date").
3. This Amendment No. 6 amends certain terms and conditions of the Existing Agreement. In the event of inconsistency between the provisions of this Amendment No. 6 and the prior provisions of the Existing Agreement, the provisions of this Amendment No. 6 shall prevail. Except as modified by this Amendment No. 6, the Existing Agreement is ratified, affirmed, remains in full force and effect, and is incorporated herein by this reference.
4. The Parties agree to negotiate in good faith concerning Biodiversity First!'s concerns with respect to the Approvals during the Tolling Period. Although Biodiversity First! and its members prepared a Notice of Intent to Challenge Approval of the California Flats Solar Project on March 23, 2015, Biodiversity First! represents that it has not, in fact, filed the threatened lawsuit as of the Effective Date. Biodiversity First! further agrees that it will not, and none of its members will, file any CEQA Claims or any other lawsuit against Monterey County or Cal Flats LLC with respect to the Cal Flats Project before July 3, 2015 (the date, as extended by the terms of this Agreement, on which the period for filing CEQA claims related to the Cal Flats Project will expire). In the event of a violation or breach of the terms of this Paragraph 4, the Agreement and any tolling or extension periods, will be null and void and have no effect.
5. For any construction activities scheduled to take place on or before July 2, 2015, Cal Flats agrees to provide Biodiversity First! with notice at least ten (10) calendar days prior to the start of such construction. Upon the provision of such pre-construction notice, the limitations imposed by Paragraph 4 of this Agreement shall have no further force or effect.
6. The Parties recognize and understand that the execution of this Agreement is not and shall not be deemed to constitute evidence of, or an admission of, liability for, or otherwise to affect the merits of, any claim, cause of action, or defense, except with respect to the statute of limitations applicable to the CEQA Claims, and agree that this Agreement shall not be submitted as evidence for any other purpose. The Parties further recognize and understand that the execution of this Agreement is not and shall not be deemed to otherwise affect any CEQA claims or defenses, including, but not limited to, arguments that Biodiversity First! failed to exhaust administrative remedies or lacks standing to file any lawsuit or claims challenging the Approvals.
7. This Agreement shall terminate automatically as of the Expiration Date as provided in Paragraph 2, above, unless extended in writing, signed by all the Parties who continue to agree to be bound.
8. Each signatory to this Agreement represents that he/she has the authority to execute this Agreement on behalf of his/her respective Party and bind that Party to the terms of this Agreement.
9. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all such counterparts when taken together shall constitute but one Agreement.

This Agreement may be delivered by facsimile transmission or electronic transmission in portable document format of signed

IN WITNESS WHEREOF, each of the Parties hereto has executed this Agreement or has caused this Agreement to be executed by its duly authorized representatives.

Dated: June 4, 2015


Charles J. McKee, County Counsel
Attorneys for COUNTY OF MONTEREY

Dated: June __, 2015

Elizabeth M. Deane
Authorized Representative for
CALIFORNIA FLATS SOLAR LLC

Dated: June __, 2015

Linda Seeley
Authorized Representative for
BIODIVERSITY FIRST!

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Dated: June __, 2015

Charles J. McKee, County Counsel
Attorneys for COUNTY OF MONTEREY

Dated: June , 2015

Beth Deane

Elizabeth M. Deane
Authorized Representative for
CALIFORNIA FLATS SOLAR LLC

Dated: June __, 2015

Linda Seeley
Authorized Representative for
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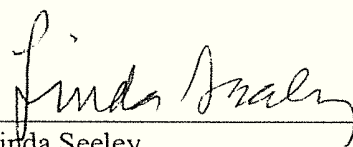
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Charles J. McKee, County Counsel
Attorneys for COUNTY OF MONTEREY

Dated: June __, 2015

Elizabeth M. Deane
Authorized Representative for
CALIFORNIA FLATS SOLAR LLC

Dated: June 4, 2015



Linda Seeley
Authorized Representative for
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